
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Aquila, Inc. |) | File No. EB-04-KC-019 |
| Owner of Antenna Structure, Registration |) | NAL/Acct. No.: 200432560004 |
| Number 1045708 |) | FRN: 0002-5060-53 |
| in Lee's Summit, Missouri |) | |
| Kansas City, Missouri |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 5, 2004

By the Enforcement Bureau, Kansas City Office:

I. Introduction

1. In this Notice of Apparent Liability for forfeiture ("NAL"), we find Aquila, Inc., ("Aquila"), owner of antenna structure #1045708 in Lee's Summit, Missouri, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for repeated violation of Section 17.51 of the Commission's Rules ("Rules").¹ Specifically, we find Aquila apparently liable for failing to exhibit obstruction lighting from sunset to sunrise.

II. Background

2. On February 3, 2004, an agent from the Commission's Kansas City Field Office observed an antenna structure in Lee's Summit, Missouri, that was painted but exhibiting no operational lighting at approximately 6:00 PM.

3. On February 4, 2004, the agent observed the structure's posted Antenna Structure Registration ("ASR") number as 1045708. The tower is 67 meters above ground level, in use, and located at N38° 56' 17" and W94° 23' 49". The structure's ASR requires it be painted and have red lighting exhibited from sunset to sunrise. The Federal Aviation Administration ("FAA") Flight Service Station ("FSS") as of February 4, 2004, had no light outage reported for any antenna structure in Lee's Summit, Missouri.

4. On February 5, 2004, the agent observed the structure at approximately 6:45 AM with no operational lighting. The FAA Columbia Flight Service Station had no record of a tower outage for tower bearing registration number 1045708 in Lee's Summit, Missouri. The agent reported the outage to the

¹ 47 C.F.R. § 17.51.

FAA.

5. On February 6, 2004, the agent interviewed by telephone Mr. Larry Baldwin, the Missouri Aquila tower contact. Mr. Baldwin stated he was not aware of the light outage, and that no alarms indicating an outage had been observed. Mr. Baldwin called the agent several hours later and stated that the cause of the light outage was a “bad photo cell.” Mr. Baldwin advised the alarm system checks for current in the light wiring when the photo cell is on. If the photo cell is not on or non-functioning, the alarm system does not check the light wiring current. The alarm system does not alert for a malfunctioning photo cell. When asked how long the lights had been out, Mr. Baldwin replied “they weren’t out a week ago, but the staff noticed the lights out 2 or 3 days ago, so less than 1 week.” The agent advised Mr. Baldwin the light outage had been reported to the FAA FSS. Tower ownership by Aquila Inc., was confirmed by Mr. Baldwin. The FCC’s ASR database indicates the owner is Utilicorp United, Inc. but Utilicorp has been renamed Aquila, Inc. and the antenna structure registration information had not been changed.

III. Discussion

6. Section 17.51 of the Rules requires that red obstruction lighting be exhibited from sunset to sunrise. Aquila owns antenna structure 1045708 and is required to exhibit red obstruction lighting on that structure from sunset to sunrise. Aquila, Inc. failed to exhibit the required lights on its antenna structure between sunset and sunrise from at least February 3 to February 5, 2004. In addition, Aquila, Inc. knew of the outage for at least two days but failed to notify the FAA immediately of the improper functioning of the structure’s lighting.²

7. Based on the evidence before us, we find that Aquila, Inc. repeatedly³ violated Section 17.51 of the Rules by failing to exhibit required obstruction lighting on its antenna structure between sunset and sunrise during the period of February 3, 2004 to February 5, 2004.

8. Pursuant to Section 1.80(b) (4) of the Rules, the base forfeiture amount for failure to comply with prescribed antenna structure lighting and/or markings is \$10,000.⁴ Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), requires us to take into account “...the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.”⁵ Considering the entire record and applying the statutory factors listed above, this case warrants a \$10,000 forfeiture.

² Owners of registered antenna structures with assigned lighting must immediately report to the FAA any known improper functioning of any top or flashing light. *See* 47 C.F.R. § 17.48(a).

³ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

IV. Ordering Clauses

9. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ Aquila, Inc., is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of \$10,000 for repeated violation of Section 17.51 of the Commission's Rules.

10. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release of this NAL, Aquila, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

11. Payment of the forfeiture may be made by a check, or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must note the FRN and NAL/Acct. No. referenced in the letterhead above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, SW, Washington, D.C. 20554.⁸

12. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, D.C. 20554, Attn: Spectrum Enforcement Division, and must include the FRN and NAL/Acct. No. referenced in the letterhead above.

13. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, and 1.80.

⁸ See 47 C.F.R. § 1.1914.

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in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes

only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

15. **IT IS FURTHER ORDERED THAT** a copy of this NAL shall be sent by regular mail and Certified Mail, Return Receipt Requested, to Aquila, Inc., 20 West 9th, Kansas City, Missouri 64104.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director